

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

MARIO SIMS, )  
                  )  
Plaintiff     )     CAUSE NO. 3:06-CV-131 RM  
v.              )  
                  )  
DEBRA DAUGHERTY, *et al.*     )  
                  )  
Defendants    )

OPINION AND ORDER

Mario Sims, a *pro se* prisoner, filed a motion to reconsider this court's order denying him leave to proceed *in forma pauperis* because he has accumulated three strikes. Mr. Sims questions the validity of the determination of two of his three strikes. This order will review each of those strikes in the same sequence they were presented in this court's prior order (docket # 3).

In regard to this court's determination that 3:00-CV-736 is a strike, Mr. Sims argues that the case was dismissed without prejudice and according to Clemons v. Young, 240 F.Supp.2d 639 (E.D. Mich. 2003), the dismissal shouldn't be considered a strike. The Clemons court held "...that an action dismissed entirely without prejudice is not a 'strike' for the purpose of Section 1915(g)." 3:00-CV-736 was not entirely dismissed without prejudice. Only that part of the complaint regarding the civil RICO claims was dismissed without prejudice pursuant to Heck v. Humphrey, 512 U.S. 477 (1994). Dismissals, with or without prejudice, pursuant to Heck are considered strikes pursuant to §1915(g) because

when the complaint was filed it failed to state a claim upon which relief could be granted. It is a strike.

In regard to this court's determination that IP98-C-0327-M/S is a strike, Mr. Sims argues that it was dismissed after a settlement hearing which took place in November 1997. Mr. Sims is incorrect. This case was not filed until March 6, 1998, and was dismissed on April 14, 1998 after the court determined that the complaint failed to state a claim upon which any relief could be granted. Mr. Sims might have this case confused with IP97-C-1548-H/G in which Chaplain Thompson was a defendant. IP98-C-0327-M/S was not pending in November of 1997, and is a strike.

This review has determined that Mr. Sims has three strikes, which bar him from proceeding *in forma pauperis* unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Mr. Sims does not argue that he qualifies for the imminent danger exception. Therefore he may not proceed with this lawsuit unless he pays the full filing fee in advance.

For the foregoing reasons, the motion (docket # 4) is **DENIED**.

SO ORDERED.

ENTERED: March 10, 2006

/s/ Robert L. Miller, Jr.  
Chief Judge  
United States District Court